

CHAPTER 12-60

BUREAU OF CRIMINAL INVESTIGATION

12-60-01. Bureau created. A bureau of the state government, under the attorney general, is hereby created and is designated as the bureau of criminal investigation, hereinafter referred to as the bureau.

12-60-02. Board of managers - Selection of members - Qualifications. Repealed by S.L. 1971, ch. 141, § 1.

12-60-03. Terms of office - Filling of vacancies. Repealed by S.L. 1971, ch. 141, § 1.

12-60-04. Duty of board - Salaries. Repealed by S.L. 1971, ch. 141, § 1.

12-60-05. Attorney general - Duties - Appointment of personnel. The attorney general shall act as superintendent of the bureau and shall have the responsibility of and shall exercise absolute control and management of the bureau. The attorney general shall appoint and fix the salary of a chief of the bureau, such special agents, and such other employees as the attorney general deems necessary to carry out the provisions of this chapter within the limits of legislative appropriations therefor.

12-60-06. Furnishing of equipment. The attorney general shall provide the bureau with necessary furniture, fixtures, apparatus, appurtenances, appliances, materials, and equipment as the attorney general deems necessary for the collection, filing, and preservation of all records required by law to be filed with the bureau or which the attorney general may authorize to require or procure respecting the identification and investigation of criminals, the investigation of crime and detection of the perpetrators thereof, and identification and information concerning stolen, lost, found, pledged, or pawned property.

12-60-07. Powers, duties, and functions of bureau.

1. The bureau shall cooperate with and assist the criminal bureau of the department of justice at Washington, D.C., and similar departments in other states in establishing and carrying on a complete system of criminal identification.
2. The bureau shall cooperate with and assist all judges, state's attorneys, sheriffs, chiefs of police, and all other law enforcement officers of this or any other state and of the federal government in establishing such system of criminal identification.
3. The bureau is the state central repository for the collection, maintenance, and dissemination of criminal history record information.
4. The bureau shall assist the sheriffs and other peace officers in establishing a system for the apprehension of criminals and detection of crime.
5. When called upon by any state's attorney, sheriff, police officer, marshal, or other peace officers, the superintendent, chief of the bureau, and their investigators may assist, aid, and cooperate in the investigation, apprehension, arrest, detention, and conviction of all persons believed to be guilty of committing any felony within the state.
6. The bureau shall perform such other duties in the investigation, detection, apprehension, prosecution, or suppression of crimes as may be assigned by the attorney general in the performance of the attorney general's duties.
7. The bureau shall provide assistance from time to time in conducting police schools for training peace officers in their powers and duties, and in the use of approved

methods for detection, identification, and apprehension of criminals and require attendance at such police schools.

8. The bureau shall perform the inspection and enforcement duties for the attorney general's licensing department.
9. The bureau shall detect and apprehend persons illegally possessing or disposing of drugs.

12-60-07.1. Automated fingerprint identification system. The bureau may establish and maintain an automated fingerprint identification system for this state. The bureau may cooperate with other states for the operation of a regional automated fingerprint identification system.

12-60-08. Powers of investigators. For the purpose of carrying out the provisions of this chapter, the investigators shall have all the powers conferred by law upon any peace officer of this state.

12-60-09. Authorization of attorney general for investigations. No investigation of the acts or conduct of any state agency or state official shall be investigated or made through or by the bureau or any employee thereof, without the authorization of the attorney general particularly specifying the office, department, or person to be investigated and the scope and purposes of the investigation.

12-60-10. Fingerprints, photographs, description of persons charged with felony to be procured and filed. Repealed by S.L. 1987, ch. 162, § 12.

12-60-11. Enforcement officers to send fingerprints and descriptions of felons to the bureau - Report of the bureau to arresting officer. Repealed by S.L. 1987, ch. 162, § 12.

12-60-12. Officer may send fingerprints of persons having certain property in possession. Repealed by S.L. 1987, ch. 162, § 12.

12-60-13. Court to ascertain criminal record of defendant - Furnish information of offense to the bureau. The judge of the district court of the county in which a defendant is to be sentenced, or the state's attorney or sheriff thereof, shall ascertain the criminal record of every defendant convicted of a felony before sentence is passed on said defendant. The state's attorneys and sheriffs, upon the request of the chief of the bureau or the attorney general, shall furnish to the chief of the bureau a statement of facts relative to the commission or alleged commission of all felonies within their respective counties upon such blanks or in such form as may be requested by the chief of the bureau or the attorney general.

12-60-13.1. County and city officials to furnish crime statistics to superintendent. Repealed by S.L. 1983, ch. 556, § 6.

12-60-14. Violation of chapter - Misdemeanor. Repealed by S.L. 1975, ch. 106, § 673.

12-60-15. Duty to furnish information. Repealed by S.L. 1987, ch. 162, § 12.

12-60-16. Report of arrested person's transfer, release, or disposition of case. Repealed by S.L. 1987, ch. 162, § 12.

12-60-16.1. Definitions. As used in sections 12-60-16.1 through 12-60-16.10, unless the context otherwise requires:

1. "Bureau" means the bureau of criminal investigation.
2. "Court" means the supreme court, district courts, and municipal courts of the North Dakota judicial system.

3. "Criminal history record information" includes information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, information, or other criminal charges, any dispositions arising therefrom, sentencing, correctional supervision, and release.
4. "Criminal justice agency" means any government law enforcement agency or entity authorized by law to provide information regarding, or to exercise the powers of, arrest, detention, prosecution, correctional supervision, rehabilitation, or release of persons suspected in, charged with, or convicted of, a crime.
5. "Disseminate" means to transmit criminal history record information in any oral or written form. The term does not include:
 - a. The transmittal of the information within a criminal justice agency.
 - b. The reporting of the information as required by section 12-60-16.2.
 - c. The transmittal of the information between criminal justice agencies in order to permit the initiation of subsequent criminal justice proceedings against a person relating to the same offense.
6. "Noncriminal justice agency" means an entity that is not a criminal justice agency.
7. "Record subject" means the person who is the primary subject of a criminal history record. The term includes any representative designated by that person by power of attorney or notarized authorization. If the subject of the record is under legal disability, the term includes that person's parents or duly appointed legal representative.
8. "Reportable event" means an interaction with a criminal justice agency for which a report is required to be filed under section 12-60-16.2. The term includes only those events in which the subject of the event is an adult or a juvenile adjudicated as an adult.

12-60-16.2. Criminal history record information - Reportable events. Except as otherwise provided in sections 12-60-16.1 through 12-60-16.10, each criminal justice agency shall report to the bureau the information described in this section for each felony and reportable offense so designated pursuant to section 12-60-16.4. The bureau may require the criminal justice agency to provide the information in a manner that the bureau determines to be the most efficient or accurate means of collection. The following criminal justice agencies shall perform the duties indicated:

1. Except as otherwise provided in this subsection, each criminal justice agency that makes an arrest for a reportable offense shall, with respect to that offense and the person arrested, furnish to the bureau the fingerprints, charges, and descriptions of the person arrested. If the arrest is made by a criminal justice agency that is a state law enforcement agency, then, on request of the arresting agency, a sheriff or jail administrator shall take the fingerprints. The arresting agency shall then furnish the required information to the bureau. If a decision is made not to refer the arrest for prosecution, the criminal justice agency making that decision shall report the decision to the bureau. A criminal justice agency may make agreements with other criminal justice agencies for the purpose of furnishing to the bureau information required under this subsection.
2. The prosecuting attorney shall notify the bureau of all charges filed, including all those added after the filing of a criminal court case, and whether charges were not filed in criminal cases for which the bureau has a record of an arrest.

3. After the court pronounces sentence for a reportable offense, and if the person being sentenced has not been fingerprinted with respect to that case, the prosecuting attorney shall ask the court to order a law enforcement agency to fingerprint that person. If the court determines that the person being so sentenced has not previously been fingerprinted for the same case, the court shall order the fingerprints taken. The law enforcement agency shall forward the fingerprints to the bureau.
4. The prosecuting attorney having jurisdiction over a reportable offense shall furnish the bureau all final dispositions of criminal cases for which the bureau has a record of an arrest or a record of fingerprints reported under subsection 3. For each charge, this information must include at least the following:
 - a. Judgments of not guilty, judgments of guilty including the sentence pronounced by the court, discharges, and dismissals in the trial court;
 - b. Reviewing court orders filed with the clerk of the court which reverse or remand a reported conviction or which vacate or modify a sentence; and
 - c. Judgments terminating or revoking a sentence to probation and any resentencing after such a revocation.
5. The North Dakota state penitentiary, pardon clerk, parole board, and local correctional facility administrators shall furnish the bureau with all information concerning the receipt, escape, death, release, pardon, conditional pardon, reprieve, parole, commutation of sentence, or discharge of an individual who has been sentenced to that agency's custody for any reportable offense which is required to be collected, maintained, or disseminated by the bureau. In the case of an escape from custody or death while in custody, information concerning the receipt and escape or death must also be furnished.

12-60-16.3. Criminal history record information - Rulemaking required. The attorney general shall adopt appropriate rules for criminal justice agencies regarding the reporting, collecting, maintaining, and disseminating of criminal history record information. The rules must include:

1. Policies and procedures to be used by criminal justice agencies regarding:
 - a. Security of criminal history record information.
 - b. Inspection and challenging of criminal history record information by a record subject.
 - c. Auditing of criminal history record information to ensure that it is accurate and complete and that it is reported, collected, maintained, and disseminated in accordance with sections 12-60-16.1 through 12-60-16.10.
 - d. Development and content of agreements between the bureau and criminal justice agencies providing for reporting of and access to criminal history record information.
 - e. Use of criminal history record information for the purpose of research and statistical analysis of criminal activity.
 - f. Criteria under which criminal history records are purged or sealed.
2. Reportable events to be reported by each criminal justice agency, in order to avoid duplication in reporting.
3. Time requirements for reporting criminal history record information to the bureau.

12-60-16.4. Criminal history record information - Reportable offenses. Criminal justice agencies shall report to the bureau reportable events for each felony and for each of the following offenses:

1. Class A and B misdemeanor offenses in sections 6-08-16 and 6-08-16.1.
2. Class A misdemeanor offenses included in title 12.1.
3. Class A and B misdemeanor offenses in chapters 19-03.1, 19-03.2, and 19-03.4 and in sections 12-47-21 and 20.1-01-18.
4. Class B misdemeanor offenses in sections 12.1-17-01, 12.1-20-12.1, 12.1-21-05, 12.1-21-06, 12.1-22-03, 12.1-23-05, and 12.1-29-03.
5. Class A misdemeanor offenses in chapter 14-07.1 and sections 43-15.1-02, 51-16.1-04, and 53-06.1-16.
6. Class A misdemeanor offenses in title 62.1.
7. Municipal ordinance violations that are equivalent to misdemeanors listed in subsections 1 through 6.
8. Infractions and misdemeanor violations of subdivision c of subsection 5 of section 39-24-09 and chapter 39-24.1.

12-60-16.5. Criminal history record information - Exchange of information among criminal justice agencies and the courts. The bureau and other criminal justice agencies shall disclose criminal history record information:

1. To a criminal justice agency that requests the information for its functions as a criminal justice agency or for use in hiring or retaining its employees.
2. To a court, on request, to aid in a decision concerning sentence, probation, or release pending trial or appeal.
3. Pursuant to a judicial, legislative, or administrative agency subpoena issued in this state.
4. As otherwise expressly required by law.

12-60-16.6. Criminal history record information - Dissemination to parties not described in section 12-60-16.5. Only the bureau may disseminate criminal history record information to parties not described in section 12-60-16.5. The dissemination may be made only if all the following requirements are met:

1. The information has not been purged or sealed.
2. The information is of a conviction, including a conviction for violating section 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-06.1, or 12.1-20-11 notwithstanding any disposition following a deferred imposition of sentence; or the information is of a reportable event occurring within three years preceding the request.
3. The request is written and contains:
 - a. The name of the requester.
 - b. The name of the record subject.

- c. At least two items of information used by the bureau to retrieve criminal history records, including:
 - (1) The fingerprints of the record subject.
 - (2) The state identification number assigned to the record subject by the bureau.
 - (3) The social security number of the record subject.
 - (4) The date of birth of the record subject.
 - (5) A specific reportable event identified by date and either agency or court.
4. The identifying information supporting a request for a criminal history record does not match the record of more than one individual.

In order to confirm a record match, the bureau may contact the requester to collect additional information if a request contains an item of information that appears to be inaccurate or incomplete.

12-60-16.7. Criminal history record information - Prohibited dissemination. If dissemination is prohibited under section 12-60-16.6, or there is no information, the bureau shall provide the following answer to the requester: "No information is available because either no information exists or dissemination is prohibited."

12-60-16.8. Criminal history record information - Required disclosure of certain dissemination. If the bureau disseminates information under section 12-60-16.6, unless the request was accompanied by an authorization on forms prescribed by the bureau and signed by the record subject, the bureau shall mail notice of that dissemination to the record subject at the last known address of the record subject.

12-60-16.9. Criminal history record information - Fee for record check. The bureau shall impose a fee of fifteen dollars for each state record check. The bureau shall impose a fee of five dollars for each record check for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of minors. The bureau shall impose a fee of five dollars for each record check conducted on a volunteer providing services for a nonprofit organization that is organized and operated in this state exclusively for charitable purposes for the exclusive benefit of vulnerable elderly adults. The bureau shall impose a fee of fifteen dollars for processing fingerprints necessary for each nationwide criminal history record check. The bureau shall waive the fees for any criminal justice agency or court.

12-60-16.10. Criminal history record information - Penalty. Any willful violation as defined in section 12.1-02-02 of any provision of sections 12-60-16.1 through 12-60-16.9 relating to reporting or disseminating criminal history record information is a class A misdemeanor.

12-60-16.11. Criminal history record information - Required action. Any person offering criminal background checks for compensation, for the purpose of screening applicants seeking a position in which the applicant is responsible for providing care for a vulnerable adult, shall utilize the bureau of criminal investigation statewide criminal history data base in addition to any other compiled information. The entity shall pay any applicable fees set forth in section 12-60-16.9.

12-60-17. Superintendent to make rules and regulations. The superintendent, pursuant to chapter 28-32, shall make and promulgate such rules and regulations, not inconsistent with the provisions of this chapter, as may be necessary and proper for the efficient performance of the bureau's duties. Such rules and regulations must be printed and forwarded to each state's attorney, sheriff, marshal, or other peace officer, and each of said officers shall

assist the superintendent in the performance of the superintendent's duties by complying with such rules and regulations.

12-60-18. Money collected paid into general fund. All moneys collected or received, including all rewards for the apprehension or conviction of any criminal earned or collected by the superintendent, the chief of the bureau, his assistants, or any employee of his office, shall be paid into the general fund of the state.

12-60-19. Cooperation of bureau. Repealed by S.L. 1983, ch. 556, § 6.

12-60-20. Bureau to act as a consumer fraud bureau. Repealed by S.L. 1983, ch. 556, § 6.

12-60-21. State crime laboratory. Repealed by S.L. 2003, ch. 469, § 13.

12-60-22. Provision of laboratory facilities and technical personnel - Request. Repealed by S.L. 2003, ch. 469, § 13.

12-60-23. Bureau to maintain registry of protection and restraining orders. The bureau shall maintain a registry of all orders of which it receives notice under sections 11-15-32 and 14-07.1-03.

12-60-24. Criminal history record checks.

1.
 - a. The agencies and entities named in subsection 2 shall require each applicant, employee, or petitioner for adoption to consent to a statewide and nationwide criminal history record check for the purpose of determining suitability or fitness for a permit, license, employment, or adoption.
 - b. Each applicant, employee, or petitioner for adoption subject to a criminal history check shall provide to the requesting agency or entity written consent to conduct the check, two sets of fingerprints from a law enforcement agency or other local agency authorized to take fingerprints, any other identifying information requested, and a statement indicating whether the applicant or employee has ever been convicted of a crime.
 - c. The agency or entity shall submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. Except if otherwise provided by law, federal bureau of investigation criminal history record information obtained by an agency or entity is confidential. For a request for nationwide criminal history record information made under this section, the bureau of criminal investigation is the sole source to receive the fingerprint submissions and responses from the federal bureau of investigation. A person who takes fingerprints under this section may charge a reasonable fee to offset the cost of fingerprinting. Unless otherwise provided by law, the bureau of criminal investigation may charge appropriate fees for criminal history information.
2. The bureau of criminal investigation shall provide to each agency or entity listed in this subsection who has requested a statewide and nationwide criminal history record check, the response of the federal bureau of investigation and any statewide criminal history record information that may lawfully be made available under this chapter:
 - a. The governing body of a city or a county, by ordinance or resolution, for each applicant for a specified occupation with the city or county.

- b. The agriculture commissioner for each applicant for a license to grow industrial hemp under section 4-41-02.
- c. The education standards and practices board for initial and reciprocal teacher licenses under sections 15.1-13-14 and 15.1-13-20 and school guidance and counseling services under section 15.1-13-23.
- d. The medical examiners board for licenses or disciplinary investigations under section 43-17-07.1, except that criminal history record checks need not be made unless required by the board.
- e. The private investigative and security board for licenses or registrations under section 43-30-06.
- f. The human services department for foster care licenses under section 50-11-06.8, appointments of legal guardians under section 50-11.3-01, and petitions for adoptions under section 50-12-03.2, except that the criminal history record investigation must be conducted in accordance with those sections.
- g. The human services department for carecheck registrations under section 50-11.1-06.2.
- h. The chief information officer of the information technology department for certain employees under section 54-59-20.
- i. A public peace officer training school that has been approved by the peace officer standards and training board for enrollees in the school. The school may only disclose the criminal history record information as authorized by law. The school shall pay the costs for securing the fingerprints, any criminal history record information made available under this chapter, and for the nationwide criminal history background check. This subdivision does not apply to the highway patrol law enforcement training center and enrollees who have a limited license under section 12-63-09.
- j. The North Dakota public employees retirement board for individuals first employed by the public employees retirement board after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
- k. The executive director of the retirement and investment office for individuals first employed by the retirement and investment office after July 31, 2005, who have unescorted physical access to the office or any security-sensitive area of the office as designated by the executive director.
- l. The Bank of North Dakota for each applicant for a specified occupation with the Bank as designated by the president.
- m. Job service North Dakota for each applicant for a specified occupation with job service as designated by the executive director.
- n. The state department of health for employees assigned duties related to bioterrorism and homeland security issues as designated by the state health officer; a nurse aide seeking to have a finding of neglect removed from the nurse aide registry; or an individual being investigated by the state department of health who holds a license, certificate, or registration in a health-related field.